VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

REVIEW AND REGULATION LIST **VCAT REFERENCE NO. Z222/2022**

CATCHWORDS

Review and Regulation List – medical practitioner – obtaining financial advantage by deception, improperly accessing, storing and using clinical records without therapeutic purpose, providing untruthful information in response to allegation, failure to notify the regulator of criminal charges, agreed facts and findings, proposed determination partially agreed, whether global determination appropriate, relevance of specific deterrence and general deterrence, sections 5 and 196 of the *Health Practitioner Regulation National Law (Victoria) Act 2009*, *Medical Board of Australia v Griffiths* (Review & Regulation) [2017] VCAT 822.

APPLICANT	Medical Board of Australia
RESPONDENT	Alex Po Tsun Chu
WHERE HELD	Videoconference
BEFORE	Presiding Member N Campbell & Members Dr A Williams and Dr P Molloy
HEARING TYPE	Hearing
DATE OF HEARING	3 October 2023
DATE OF ORDER	1 February 2024
DATE OF WRITTEN REASONS	1 February 2024
CITATION	Medical Board of Australia v Chu (Review and Regulation) [2024] VCAT 89

The Tribunal notes that on 4 April 2022, the Tribunal made the following further order:

> Under section 146(4)(b) of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic), the Tribunal directs that no person other than a party to the proceeding or their legal representatives may inspect the Tribunal file.

FINDINGS

With the agreement of the respondent, the Tribunal finds as follows:

1 Between 20 January 2018 and 18 October 2018, contrary to section 82(1) of the *Crimes Act 1958* (Vic) ('Crimes Act'), the respondent obtained financial

advantage by deception by billing private health insurers in the amount of $24,005.75.

2 Between on or about June 2016 and February 2018, the respondent improperly accessed, stored and used clinical records of patients at the Jesse McPherson Hospital without any therapeutic purpose and for the purpose of gaining financial advantage by deception.

3 On or about 15 July 2019, the respondent responded untruthfully to the allegations raised by Monash Health concerning his billing of insurers for providing assistant surgery services which occurred from on or about 8 June 2016 and 4 February 2018.

4 Between on or about 18 May 2020 and 25 May 2020, contrary to section 130(1) of the *Health Practitioner National Law (Victoria) Act 2009* (Vic), the respondent failed to notify the applicant of a relevant event within seven (7) days, namely that he had been charged with an offence punishable by 12 months imprisonment or more.

5 The conduct described in findings 1 to 4, when considered together, was professional misconduct within the meaning of the definition of professional misconduct in paragraphs (a) and (c) of section 5 of the *Health Practitioner National Law (Victoria) Act 2009.*

ORDERS

Pursuant to the *Health Practitioner National Law (Victoria) Act 2009* ('National Law'), the Tribunal orders:

1 Under section 196(2)(a) of the National Law, Dr Alex Po Tsun Chu is reprimanded.

2 Under section 196(2)(d) of the National Law, Dr Alex Po Tsun Chu's registration as a medical practitioner is suspended for a period of six months from the date of this order.

3 Under section 196(2)(b) of the National Law, conditions be imposed on Dr Alex Po Tsun Chu's registration as follows:

Undertake education

(a) The Practitioner must undertake and successfully complete a program of education, approved by the Medical Board of Australia (Board) and including a reflective practice report, in relation:

(1) the principles of ethical professional conduct, including in relation to:

(A) billing practices with respect to third party providers including the Victorian Workcover Authority, the Transport Accident Commission and Medicare; and

(B) the requirement for professional behaviour as required by s 8 of the *Good Medical Practice: A Code of Conduct for Doctors in Australia*, including the requirement to be honest and not misleading in preparing documentation as required by sub-s 8.8;

(2) the consequences of unethical professional conduct, including in relation to unethical billing practices and the adverse impact on the reputation of the medical profession and patient trust.

(a) The education must consist of a minimum number of six (6) hours completed over a six (6) month period.

(b) The Practitioner must complete the education within six (6) months of the notice of the Board's approval of the education.

(c) Within 14 days of the notice of the imposition of these conditions, the Practitioner must, on the approved form (HPN11):

(1) nominate a person(s) to be approved by the Board to act as educator; and

(2) provide acknowledgement that Ahpra will obtain a report from the approved educator at the conclusion of the education.

(e) The Practitioner must ensure that the nomination of an educator is accompanied by acknowledgement, on the approved form (HPNA11), from the nominated educator and by an education plan outlining the form the education will take and how the topics of the education will be addressed.

(f) Within 30 days of the completion of the education, the Practitioner is to provide:

(1) Evidence of successful completion of the education.

(2) A report demonstrating, to the satisfaction of the Board, that the Practitioner has reflected on the issues that gave rise to this condition requiring they undertake education and how the Practitioner has incorporated the lessons learnt in the education into the Practitioner's practice.

Attend for mentoring

(g) The Practitioner must be mentored by another registered health practitioner in relation to:

(1) the Practitioner's conduct that gave rise to the conditions; and

(2) the steps the Practitioner has and is taking to incorporate the lessons he has learnt, including during the education and mentoring, into his practise of the profession including with respect to his billing practices.

For the purposes of this condition, 'mentoring' is defined as a relationship in which a skilled registered practitioner (the mentor) helps to guide the professional development of another practitioner.

(h) The mentoring must comprise a minimum of 12 sessions with each session being of one (1) hour duration occurring over a 12 month period.

(i) Within 14 days of the notice of the imposition of these conditions, the Practitioner must, on the approved form (HPN16), nominate a person(s) to be approved by the Board to act as mentor. The Practitioner must ensure that the nomination is accompanied by acknowledgement, on the approved form (HPNA16), from the nominated person.

(j) Within 14 days of the notice of the imposition of these conditions the Practitioner must provide to Ahpra, on the approved form (HP16), acknowledgement that Ahpra may seek reports from the approved mentor on any or all of the following occasions:

(1) every month;

(2) at the conclusion of the mentoring relationship in order to confirm the outcomes of the mentoring;

(3) whenever the mentor has a concern or becomes aware of a concern regarding the Practitioner’s conduct or professional performance, and

(4) when otherwise requested by Ahpra.

(k) In the event an approved mentor is no longer willing or able to provide the mentoring required the Practitioner is to provide a new nomination in the same terms as previous nominations. Such nomination must be made by the Practitioner within 21 days of becoming aware of the termination of the mentoring relationship.

(l) Within 30 days of the conclusion of the mentoring the Practitioner must provide a report demonstrating, to the satisfaction of the Board, that the Practitioner has reflected on

the issues that gave rise to the condition requiring they attend for mentoring and outlining how the Practitioner has incorporated the lessons learnt in the mentoring into their practise.

Undertake audits of practice

(m) The Practitioner must submit to an audit of their practice (the audit), including any supporting records, within four (4) months of the Board approval of the auditor and thereafter every four (4) months, by permitting an auditor (the auditor) approved by the Board to attend any and all places of practice (public and private) for the purpose of the audit and by permitting the auditor to provide a report in relation to the findings of the audit. The audit and the audit report are to focus on the Practitioner's billing practices and must include, a sample of the Practitioner's billing and supporting records.

(n) Within 14 days of the notice of the imposition of these conditions, the Practitioner must provide to Ahpra:

  (1) nomination, on the approved form (HPN12), of an auditor(s) to be approved by the Board;

  (2) acknowledgement, on the approved form (HPN12), that Ahpra will seek reports from the approved auditor at the conclusion of each audit, and

  (3) acknowledgement, on the approved form (HPNA12), from the nominated auditor.

(o) The Practitioner must ensure that the nomination of an auditor(s), is accompanied by a written audit plan, from the approved auditor, outlining the form the audit(s) will take and how the area of concerns for the Board will be addressed. The audit(s) will take the form determined by the auditor.

Attend treating practitioner

(p) The Practitioner must undertake treatment with his treating practitioner(s) (including his general medical practitioner, psychiatrist and psychologist) and attend at a frequency determined by the treating practitioner(s) and, if they consider such support appropriate, the practitioner must attend Gamblers Anonymous or another gambling assistance program if requested by his treating practitioners.

(q) Within 21 days of the notice of the imposition of these conditions, the Practitioner must provide the following to Ahpra:

  (1) The contact details, on the approved form (HPF3), of all treating practitioners.

(2) Acknowledgement, on the approved form (HPF3), from the Practitioner that Ahpra may seek reports from the treating practitioner(s) on a quarterly basis.

(3) Confirmation, on the approved form (HPNA3), from the treating practitioner(s) that they have seen a copy of the conditions on the Practitioner's registration and are aware Ahpra may contact them to seek reports.

Other

(r) Within 21 days' notice of the imposition of these conditions the Practitioner must provide to Ahpra, on the approved form (HPC), the contact details of a senior person, such as the Director of Medical Services, Director of Nursing, Senior Practice Manager, Senior Manager, Senior Partner, Proprietor, Owner, or equivalent (the senior person) at each current place of practice. In providing this form, the practitioner acknowledges that Ahpra will contact the senior person and provide them with a copy of the conditions on the Practitioner's registration or confirm that the senior person has received a copy of the conditions from the Practitioner. The practitioner will be required to provide the same form:

(1) within seven days of the commencement of practice at each subsequent place of practice, and

(2) within seven days of each and every notice of any subsequent alteration of these conditions.

All costs associated with compliance with the conditions on their registration are at the Practitioner's own expense.

4 The review period of the conditions on Dr Chu's registration is 12 months.

N Campbell **Presiding Member**	Dr A Williams **Health Practitioner Member**	Dr P Molloy **Health Practitioner Member**

APPEARANCES:

For Applicant	Mr J Stoller of Counsel instructed by Mr S Williams, solicitor, Piper Alderman Lawyers and Ms L Yii from the Medical Board of Australia

For Respondent	Mr T Katz of Counsel instructed by Ms I Nunnink, solicitor, Gilchrist Connell, Ms B Moldrich, solicitor, Gilchrist Connell, and in person

REASONS

THE PROCEEDING

1 The Medical Board of Australia ('Board') has referred to the Tribunal allegations about the respondent medical practitioner, Dr Alex Po Tsun Chu ('Dr Chu' or the 'respondent'), under section 193 of the *Health Practitioner National Law (Victoria) Act 2009* ('National Law'). In summary, the Allegations are that Dr Chu took copies of the clinical records for the purpose of obtaining financial advantage by deception, provided untrue information to his employer to cover up his conduct and failed to report the consequences of this conduct to the Board.

2 Dr Chu has admitted the conduct alleged and the characterisation of the conduct as constituting professional misconduct in relation to the four allegations pursued by the Board at the hearing.

3 The parties differ on the appropriate determination. The Board seeks the imposition of a reprimand, a suspension of six months and the imposition of conditions on Dr Chu's registration after the end of the suspension. Dr Chu agreed to the reprimand and the conditions on his registration, but opposes any period of suspension of his registration.

4 The Tribunal is satisfied that the proven conduct described in Allegations 1 to 4, when considered together, is professional misconduct within the meaning of paragraphs (a) and (c) of the definition of professional misconduct in section 5 of the National Law. The Tribunal finds that the appropriate determination is as proposed by the Board, save for a change from the proposed conditions as discussed later in these reasons.

BACKGROUND

5 Following a notification to Ahpra in September 2019, the Board decided on 11 October 2019 to commence an investigation of Dr Chu. On 26 September 2019, Dr Chu self-reported that he had been stood down from work on 18 July 2019 and had resigned from his employment on 10 September 2019.

6 On 30 March 2022, the Board made a written referral regarding Dr Chu to the Tribunal and attached a Notice of Allegations ('NOA'). The allegations and particulars contained in the Notice of Allegations are reproduce in Schedule 1 to these reasons.

7 Pursuant to directions made by the Tribunal, the parties filed with the Tribunal a joint Tribunal Book, including a Statement of Agreed Facts, Findings and Determinations, dated 16 May 2023 ('ASFFD').

8 The parties also each filed an outline of submissions and Dr Chu filed and served further documents to be relied upon at the hearing.

9 The proceeding came on for hearing before the Tribunal on 3 October 2023. At the commencement of the hearing, the Tribunal did not have in attendance the number of members required by Clause 11AJ of Schedule 1 of the VCAT Act to make a final determination. The Tribunal proposed to the parties that the matter be heard before the two members present and that a third member (being a second medical member) read the material and listen to the recording of the hearing before the Tribunal constituted by the three members makes a decision. The parties accepted this procedure on the basis that the third member would be able to ask any questions of the parties at a later time by the Tribunal seeking written submissions or the listing of a further hearing, if necessary.

10 At the commencement of the hearing, the Board indicated that it was withdrawing Allegation 5 in the NOA and was now seeking imposition on Dr Chu of a period of suspension of registration of six months rather than nine months referred to in the ASFFD.

11 Dr Chu did not give evidence. The parties each relied upon various documents in the Tribunal Book and the ASFFD.

12 At the conclusion of the hearing on 3 October 2023, the Tribunal indicated that it would make orders for the parties to provide a short note regarding a legal issue that had arisen during the parties submissions.

13 On 17 October 2023, the parties jointly advised the Tribunal by email that they no longer sought a global finding for Allegations 1 to 4 of professional misconduct under paragraphs (a), (b) and/or (c) in section 5 of the National Law and instead sought a global finding of professional misconduct within the meaning of paragraphs (a) and (c) of the definition of professional misconduct in section 5 of the National Law.

14 After the hearing, a third member was added to the panel. The third member listened to the recording of the hearing and read the documents provided by the parties. The panel then made its decision.

15 The following are the Tribunal's reasons for decision.

FACTUAL CONTEXT

16 Dr Chu obtained his medical qualifications in 2012. He was first registered as a medical practitioner in January 2013.

17 At the time of the alleged conduct, Dr Chu was employed at Monash Health as a trainee surgical registrar.

18 Dr Chu was first diagnosed with depression when he was about 18 years old. He came from a high achieving family and was defined at home by academic excellent. From his early 20s, Dr Chu had periodic issues with gambling, which he used to self-medication his depression.

19 From June 2016 to February 2018, Dr Chu removed copies of operation records of patients from the Jesse McPherson Hospital, which was part of Monash Health. Dr Chu had access to these documents in his role in the surgical unit. He took the copies of these records home without a therapeutic purpose. The records were not stored correctly or securely at his home. There was a risk of breach of patient confidentiality.

20 From 20 January 2018 to 18 October 2018, Dr Chu used the records taken from the hospital to dishonestly send bills to private health insurers for medical work which he indicated that he had undertaken. Dr Chu had not undertaken the work which he billed and was not entitled to receive payment. The health insurers paid Dr Chu for the medical items claimed. The conduct involved sending 13 invoices to health funds on eight dates between 20 January 2018 and 18 October 2018. Each of the invoices contained one or more instance where Dr Chu falsely indicated that he had assisted in surgery and was entitled to be paid for this assistance.

21 On 11 July 2019, Monash Health informed Dr Chu of a formal investigation of allegations that, on 26 occasions, he had billed on his provider number for assisting in surgery for private patients, when he was not listed as the assistant surgeon in the clinical notes.

22 On 15 July 2019, Dr Chu wrote to Monash Health regarding the investigation. In part, he stated regarding the billing for work that he did not perform that:

> … it has become my understanding that this has unfortunately resulted from an administrative error, for which I take responsibility for.
>
> …
>
> The cases detailed have all been surgeries performed on patients that I have been in contact with during my rotations on Cardiothoracic Surgery, either as an HMO or as a Registrar. I kept a copy of these cases along with other cases as part of my usual work, for reasonable clinical purposes such as clerking patients and following up on ongoing care, record keeping my logbook, and for my own learning. It was never my intention to bill these cases as the Surgical Assistant, as I understand that this was not my role in the care of these patients.
>
> Outside of my rostered working hours at Monash Health, I have also done a lot of work as a professional Surgical Assistant in order to gain more operative exposure and experience, at Jesse McPherson and other private hospitals. As these cases are additional to my usual work, it is my understanding that it is appropriate for me to bill for these cases.

> Regrettably however, this is where the administrative error has occurred. I keep a copy of both sets of operation notes on the same desk, and it seems what has happened is that the person who was helping me with my billing, has picked up and entered the Cardiothoracic cases by mistake. Admittedly, I have not been keeping a close eye on my finances nor my surgical billing and therefore have failed to identify this mistake. Often I have been taking on so much clinical work and focused on patient care, that I have let important administrative issues such as these fall by the wayside, for which I acknowledge that I need to make amends.
>
> …

23 On about 18 March 2020, Dr Chu provided a written statement to Victoria Police. The statement included the following:

a. From 20 January 2018 to 18 October 2018, Dr Chu wrongly made claims to private health funds in respect of surgeries which he did not participate in;

b. The total amount wrongly received was $24,005.75 and this amount has been fully repaid via a loan from his parents;

c. He was originally confronted with the allegation in July 2019 by the Chief Medical Officer of Monash Health and he denied the offences;

d. Dr Chu has been battling major depression for at least 16 years. He first saw a psychiatrist in 2005 and was told at that time he was severely depressed;

e. From 2016 to 2018, Dr Chu recalls being chronically fatigued, sleep deprived, overworked and undervalued. He was clocking an average of 110 hours a fortnight. Often due to overwork he missed medications and appointments with his doctor and psychiatrist. In an attempt to address his condition, he took temporary leave from clinical work and worked as a part time anatomy tutor at Monash University;

f. Dr Chu has accumulated debts due to the loss of full time income. He commenced attending Crown Casino and this compounded his debt problem;

g. Dr Chu stated that he was overwhelmed by circumstances and misguided due to his decompensated mental status, he committed what he did out of desperation as a way to pay his debts;

h. He has now had a lot of time to reflect on his misconduct and is deeply remorseful for his actions;

i. Dr Chu recognises that through his misconduct, he has misused the trust place in him and is committed to making amends. He is deeply regretful that he has compromised his career by his irresponsible actions;

j. He has been in touch with his GP and has continued his medications. Dr Chu has commenced treatment with Mr Luke Armstrong, psychologist, and Amanda Brown, rehabilitation consultant.

24 On 18 May 2020, Dr Chu was charged under the *Crimes Act 1958* (Vic) with 13 counts of obtaining financial advantage by deception.

25 On 18 August 2020, Dr Chu entered into a Diversion Plan through the Magistrates' Court of Victoria, in relation to his 13 charges of obtaining financial advantage by deception. The Diversion Plan required Dr Chu to admit the facts of the charges. The Diversion Plan conditions were that Dr Chu be of good behaviour, make a $2,500.00 donation to charity and continue to engage with Mr Luke Armstrong, psychologist. Dr Chu successfully completed the Diversion Plan by 4 January 2021, when the Diversion Plan and the charges were discharged.

26 Dr Chu failed to advise the Board of entering into this Diversion Plan.

27 On about 1 December 2021, during the investigation of this matter, Dr Chu admitted the allegations to Ahpra by a written statement, which included the text of his statement to police, dated 18 March 2020.

28 There is a significant amount of medical material relied upon by Dr Chu. In summary, the medical evidence was as follows:

a. Associate Professor David Horgan, Psychiatrist, stated in his medical report, dated 8 December 2020, that he had first seen Dr Chu in 2011 and had intermittent contact with him as a medical student and a junior doctor. Dr Chu had a fairly continuous battle with depression under Professor Horgan's care and the care of a previous psychiatrist. He has not seen Dr Chu since 2016. People with depressive illness seek emotional relief without being aware of it. Dr Chu drifted into heavy gambling. Associate Professor Horgan believes this occurred in 2017 to 2019 and stopped due to a combination of legal difficulties and the potential effect on his relationship. Dr Chu states he has not gambled for 12 months. Over the years, he lost approximately $100,000 on gambling.

   Dr Chu inappropriately billed for surgical services resulting in police charges. Dr Chu's depression has apparently been running at 6-7/10 for years, with him having a sense of worthlessness, being a failure, and a burden to others with ideas of wishing he was not alive. These are standard symptoms of depression. Dr Chu's symptoms of depression, being impairment of concentration, increasing need to sleep during the day and a lack of energy and motivation, have improved since the increase in his medication and an addition of a new medication. The overall impression is that Dr Chu's depression predisposed him to increased gambling leading to his offending. There is no reason to think that at any time Dr Chu was not perfectly capable of caring appropriately for patients.

b. The medical report from Mr Luke Armstrong, consultant psychologist, dated 20 March 2020, states that Dr Chu has undergone an initial assessment and that a preliminary assessment indicates chronic problems with Major Depression.

c. The medical report from Mr Luke Armstrong, dated 7 September 2020, states that the report was derived from six hours of interviews and testing with Dr Chu. The report stated that after failing first year medicine, Dr Chu was diagnosed with major depression. He attempted to explain this condition to his father, who referred to mental illness as a weakness and that failure was a choice. It was around this time that Dr Chu first went to the casino. He found the experience euphoric and he began attending regularly. Gambling temporarily countered Dr Chu's depressive experience. When a relationship ended, he borrowed $18,000 to $20,000 from his parents to repay his former girlfriend money he had borrowed from her for gambling. Dr Chu commenced treatment in his early 20s for depression, including with his GP, a psychiatrist and a clinical psychologist. He did not disclose his gambling addiction to his treating practitioners. In 2016, Dr Chu was a registrar and with the increase in pressure, he sought solace and escape in gambling binges. He would gamble up to $10,000 at a time. Dr Chu gambled through 2016 and 2017, as a counter to re-emergent depressive symptoms. Gambling became a form of self-medication.

   In 2018, Dr Chu deferred his registrar work and accepted a lecturer position. Conflict with his senior lecturer over his performance triggered Dr Chu's increasingly depressed mood and an increasingly amplified view that he was completely inadequate and a failure as a registrar. During 2018, Dr Chu begun to chase his losses. He borrowed money from a friend and borrowed again to chase his losses. Dr Chu was preoccupied and desperate to recoup his losses. At the time of the offending, in the context of desperation to pay debts accumulated from gambling, he rationalised making a claim for surgeries that were precluded under his hospital agreement.

   Dr Chu's gambling leading up to and during the offending would fulfill many of the DSM-5 criterion for Gambling Disorder, being both episodic and persistent and reflect a moderate level of severity. The gambling problem only magnified his depressive illness. Dr Chu presents with episodic periods of a Major Depressive illness. There is a long history of recurring and chronic depressive illness, with symptoms of depressed mood, loss of pleasure, sleep disturbance, feelings of uselessness or hopelessness and chronic, fleeting suicide ideation. Due to Dr Chu being ashamed to disclose his gambling problem, the prescribed treatments provided by his treatment providers inadequately addressed core aspects of the problem. Dr Chu is a low risk of reoffending as he now accepts that he has a significant problem, he presents with insight of the consequences of his

behaviour. The offending was in context of an untreated gambling problem and whilst relapse is possible, Dr Chu has so far shown he can abstain from gambling. His offending was out of character with his background history and secondary to a long term untreated gambling problem and underlying depressive illness.

d. A further medical report from Mr Luke Armstrong, dated 30 November 2020, relevantly added that Dr Chu was a low risk of repeat conduct, as he has demonstrated genuine regret with regard to his misconduct, the offending was entwined within co-occurring mental disorder. Full disclosure to his treatment providers and his fiancée suggests that Dr Chu is no longer in denial that he has a problem. His relationship with his fiancée is a corrective relationship and a protective factor in Dr Chu's rehabilitation. The report also stated that Dr Chu's mental state is such that whilst ongoing support is required, his mental state would not detrimentally affect his capacity to practice his profession. The report also states that Dr Chu has improved insight as a consequence of treatment. He admits that he convinced himself that gambling was not destroying his life and now accepts that he was in complete denial that he had a problem.

e. The medical report of Ms Tracey Allen, psychologist, dated 16 November 2020, states that she was Dr Chu's treating psychologist. There has been some improvement in mood, but he is encouraged to see his general practitioner to discuss increasing anti-depressant medication. Dr Chu suffers from episodic major depression and engaged in gambling behaviours as self-medication for his symptoms. As long as his depression is reasonably managed, it is unlikely to impact his capacity to function in the workplace. Dr Chu's recent acceptance of the need for transparency and openness will aid his recovery. His progress is steady and the prognosis positive. Dr Chu is able to reflect on his poorly managed symptoms of depression and its relationship with past gambling behaviour and the subsequent problems he had endured.

f. In his medical report, dated 11 October 2022, Mr Luke Armstrong, states he has assessed Dr Chu for a total of 14 hours. At the time of the report, the most recent review had been for two hours on 5 October 2022. The writer was advised by Ms Allen, psychologist, that Dr Chu's Gambling Disorder and Depressive condition were in remission. Dr Chu agreed. Dr Chu takes full responsibility for his conduct the subject of the Ahpra proceeding. Dr Chu is now in a very different place than at the time of the offending. He is treatment compliant and seeks advice from his GP. Ongoing periodic engagement with Ms Allen, perhaps quarterly or bi-annually would act as a protective measure. Dr Chu is completely transparent with his wife and transparent with many of his supervisors and mentors about his past condition. Dr Chu has engaged in significant rehabilitation

over the past three years. He has made substantial efforts towards rehabilitation for his misconduct. To remove his ability to practice would be contraindicative to his rehabilitation and reformation efforts and would bring about disproportionate suffering to Dr Chu. Dr Chu has displayed genuine regret regarding his misconduct. The offending is out of character, when his family history and absence of prior convictions are considered. His offending was entwined within co-occurring mental disorders. Dr Chu's mental health problems are now in remission. He does not require intensive treatment at this time. His treatment needs are periodic reviews with his GP and bi-annual debriefing with a psychologist.

g. The medical report of Ms Tracey Allen, dated 18 June 2023, states that Dr Chu has insight into his depression and his history of gambling and the insight is more impressive over time. He has realised that he needs to be responsible for his own mental health management. Dr Chu is currently managing well. His treatment has not ceased but appointment frequency has been inconsistent. Long periods between appointments are due to Dr Chu needing to confirm when he receives his roster. Counselling has not been a priority due to the good management of his mental health. He attended two appointments in 2022 and four appointments in 2023. Further treatment would ideally include medical oversight of his anti-depressant medication and counselling as needed. Dr Chu's prognosis is positive. He is able to reflect on his historically poorly managed symptoms of depression and his subsequent problems. He appreciates that his past behaviour has been destructive of himself and those around him. The period of treatment has shown Dr Chu's capacity to manage his mental health. He has demonstrated improved self-awareness and responsibility taking.

THE RELEVANT LAW

29 Section 193 of the National Law relevantly provides:

> (1) Subject to *section 193A*, a National Board must refer a matter about a registered health practitioner or student to a responsible tribunal if—
>
> (a) for a registered health practitioner, the Board reasonably believes, based on a notification or for any other reason, the practitioner has behaved in a way that constitutes professional misconduct; or
>
> (b) for a registered health practitioner or student, a panel established by the Board requires the Board to refer the matter to a responsible tribunal.

30 Section 196 of the National Law provides:

> (2) After hearing a matter about a registered health practitioner, a responsible tribunal may decide—

(a) the practitioner has no case to answer and no further action is to be taken in relation to the matter; or

(b) one or more of the following—

(i) the practitioner has behaved in a way that constitutes unsatisfactory professional performance;

(ii) the practitioner has behaved in a way that constitutes unprofessional conduct;

(iii) the practitioner has behaved in a way that constitutes professional misconduct;

(iv) the practitioner has an impairment;

(v) the practitioner's registration was improperly obtained because the practitioner or someone else gave the National Board established for the practitioner's health profession information or a document that was false or misleading in a material particular; or

(3) If a responsible tribunal makes a decision referred to in *subsection (1) (b)*, the tribunal may decide to do one or more of the following—

(a) caution or reprimand the practitioner;

(b) impose a condition on the practitioner's registration, including, for example—

(i) a condition requiring the practitioner to complete specified further education or training, or to undergo counselling, within a specified period; or

(ii) a condition requiring the practitioner to undertake a specified period of supervised practice; or

(iii) a condition requiring the practitioner to do, or refrain from doing, something in connection with the practitioner's practice; or

(iv) a condition requiring the practitioner to manage the practitioner's practice in a specified way; or

(v) a condition requiring the practitioner to report to a specified person at specified times about the practitioner's practice; or

(vi) a condition requiring the practitioner not to employ, engage or recommend a specified person, or class of persons,

(c) require the practitioner to pay a fine of not more than $30,000 to the National Board that registers the practitioner;

(d) suspend the practitioner's registration for a specified period;

(e) cancel the practitioner's registration.

(4) If the responsible tribunal decides to impose a condition on the practitioner's registration, the tribunal must also decide a review period for the condition.

(5) If the tribunal decides to cancel a person's registration under this Law or the person does not hold registration under this Law, the tribunal may also decide to—

(a) disqualify the person from applying for registration as a registered health practitioner for a specified period; or

(b) prohibit the person, either permanently or for a stated period, from doing either or both of the following—

(i) providing any health service or a specified health service;

(ii) using any title or a specified title; or

(c) impose restrictions, either permanently or for a stated period, on the provision of any health service or a specified health service by the person.

31 Section 5 of the National Law provides that professional misconduct of a registered practitioner includes:

(a) unprofessional conduct by the practitioner that amounts to conduct that is substantially below the standard reasonably expected of a registered health practitioner of an equivalent level of training or experience; and

(b) more than one instance of unprofessional conduct that, when considered together, amounts to conduct that is substantially below the standard reasonably expected of a registered health practitioner of an equivalent level of training or experience; and

(c) conduct of the practitioner, whether occurring in connection with the practice of the health practitioner's profession or not, that is inconsistent with the practitioner being a fit and proper person to hold registration in the profession.

32 Section 5 of the National Law also provides that unprofessional conduct means:

> … professional conduct that is of a lesser standard than that which might reasonably be expected of the health practitioner by the public or the practitioner's professional peers, and includes—
>
> (a) a contravention by the practitioner of this Law, whether or not the practitioner has been prosecuted for, or convicted of, an offence in relation to the contravention; and
>
> (b) a contravention by the practitioner of—

(i) a condition to which the practitioner's registration was subject; or

(ii) an undertaking given by the practitioner to the National Board that registers the practitioner; and

33 In the circumstances where serious allegations are made against a party including falsifying a document or fraud, the *Briginshaw standard* applies to the state of satisfaction required in making adverse findings regarding these allegations. In *Briginshaw v Briginshaw* (1938) CLR 336 at 362, Dixon J discussed the principle as follows:

> The seriousness of the allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences.

34 The principle goes to the clarity and quality of the evidence and would require excluding or giving little weight to hearsay evidence, conclusions of fact and opinion without basis, as they are inexact proofs, indefinite testimony and/or indirect inferences. The evidence of the serious allegations against Dr Chu is considered in light of this principle.

THE ALLEGATIONS

35 The full allegations (including the now withdrawn Allegation 5) and particulars are set out at Schedule 1 to these reasons. The four remaining Allegations are usefully summarised by the Board at [2] of its outline of submissions are (with typographical errors corrected):

(a) Between 20 January 2018 and 18 October 2018, Dr Chu breached s 82(1) of the *Crimes Act 1958* in that he obtained a financial advantage by deception in the amount of $24,005.75. Dr Chu's criminal offending comprised him billing private health insurers for 26 services which he dishonestly represented that he had provided, but which he had not in fact provided, and being paid for those services. (**Allegation 1**)

(b) Between June 2016 and February 2018, Dr Chu improperly accessed, stored and used clinical records of patients without any therapeutic purpose and/or for the purpose of obtaining a financial advantage by deception. Dr Chu's conduct involved him accessing and taking copies of patients' clinical records from his workplace to his home and using those records to dishonestly bill insurers for services he had not provided. (**Allegation 2**)

(c) On 15 July 2019, the Dr Chu lied to his employer when confronted with the conduct the subject of Allegation 1. Dr Chu lied by telling his employer that an administrative error had caused him to mistakenly bill for services he had not undertaken, when in fact the fraudulent billing had occurred deliberately to obtain a financial advantage to which Dr Chu was not entitled. (**Allegation 3**)

(d) Between 18 and 25 May 2020, Dr Chu breached s 130(1) of the National Law, by failing to notify the Board that he had been charged with an offence punishable by 12 months imprisonment or more (being the charge for engaging in the conduct the subject of Allegation 1). (**Allegation 4**)

36 At [50] of the ASFFD, Dr Chu accepted that he engaged in the conduct described in Allegations 1 to 4 and the particulars provided with those allegations. Dr Chu also accepted the characterisation of the conduct described in Allegations 1 to 4 as professional misconduct at [31] of his written outline. At [51] of the ASFFD, the parties jointly invited the Tribunal to make findings as to the characterisation of the conduct being professional misconduct within the meaning of paragraphs (a), (b) and/or (c) of the definition in section 5 of the National Law. In particular, in oral submissions, Counsel for Dr Chu conceded that the conduct would amount to professional misconduct under paragraph (c) of the definition, as it was inconsistent with the practitioner being a fit and proper person to hold registration in the profession.

37 After the hearing, the parties jointly submitted in writing to the Tribunal that the Tribunal should find the conduct described in Allegations 1 to 4, when considered globally, was professional misconduct within the meaning of paragraphs (a) and (c) of the definition of professional misconduct in section 5 of the National Law

38 The relevant principles for a tribunal to apply in circumstances when there is an agreed statement of facts and findings, as in the present case, are that the Tribunal must be satisfied itself that the findings are appropriate and no agreement between the regulator and the practitioner can supplant that duty.[1] However, any agreement between the parties is a highly relevant matter.[2] Whether a person is legally represented may be an important consideration.[3]

39 In this case, Dr Chu was represented by competent solicitors and Counsel in the preparation of the ASFFD and at the hearing of this matter.

1 See *Victorian Legal Services Commissioner v Hyatt* [2018] VCAT 1498 at [24]-[25] and *Commonwealth v Director Fair Work Building Industry Inspectorate* [2015] HCA 46 (2015) 258 CLR 482 at [46]-[58].

2 *Medical Board of Australia v McGrath* [2014] VCAT 641 at [19] – [21], *Medical Board of Australia v Powell* [2013] VCAT 999.

3 *Medical Board of Australia v Powell* [2013] VCAT 999.

40 On the basis of the ASFFD, Dr Chu's statement to Police, dated 18 March 2020, and the documents in the Tribunal Book, the Tribunal is comfortably satisfied that Dr Chu has engaged in the conduct alleged in Allegations 1 to 4 of the Notice of Allegations.

41 In relation to the characterisation of the conduct, Counsel for the Board submitted that the relevant features of the conduct included:

a. In relation to the admitted conduct in Allegation 2, being the taking of copies of clinical records over a period from June 2016 to February 2018, this conduct shows a longstanding and detailed preparation for the obtaining financial advantage by deception;

b. The conduct described in Allegation 1, of obtaining financial advantage by deception, was carefully calculated conduct. There were numerous small claims over a period of 10 months;

c. The controlled nature of the offending weighs against the Tribunal accepting the medical material which indicates that the conduct was in desperation to repay gambling debts;

d. While the Board accepts that Dr Chu was suffering from depression and his gambling was causally linked to his depression, there is a gap in the evidence needed to show that he was desperate to repay the gambling debts;

e. Dr Chu misused and abused his position as a medical practitioner in committing the offences, as only a medical practitioner was able to make the fraudulent claims to the private health funds;

f. The misuse of clinical notes was a deliberate misuse of his position as a medical practitioner, as only a medical practitioner had access to these clinical notes;

g. Dr Chu placed his own interests above those of the patients. He risked exposing confidential health information of patients and misused the medical records to make claims;

h. Dr Chu's conduct was a breach of trust of his patients regarding their records, to patients more broadly and the public as a whole;

i. The term used by Mr Luke Armstrong in his medical report, dated 11 October 2022, that Dr Chu made 'made a claim for surgeries that were precluded under his hospital agreement', indicates that Dr Chu was seeking to minimise his conduct to a treating practitioner. The description seeks to give the conduct the flavour of human error and negatively colours the level of insight shown by Dr Chu;

j. In relation to the conduct described by Allegation 3, Dr Chu showed ongoing dishonesty by writing a letter to the hospital eight or nine months after the last offending event in Allegation 1. The letter was drafted carefully with deliberate dishonesty. This extends the period of dishonesty from the commencement of taking the copies of the

clinical records in June 2016 to the provision of the letter with the untruthful denials and explanations on 15 July 2019;

k. While the conduct in Allegation 4, of a failure to notify the Board of a relevant event, is not as serious a matter as some other cases of this type of conduct, it is still serious.

42 Counsel for the Board submitted that the conduct was clearly unprofessional conduct that is substantially below the standard reasonably expected of a registered health practitioner of any level of training or experience. It was submitted that the definition in paragraph (c) of the definition of professional misconduct, is directed at *the conduct* of the practitioner being inconsistent with being a fit and proper person to hold registration. Therefore, the characterisation is made on the basis of the proven conduct not on what has happened at a later time. The characterisation stage of the proceeding assessed the conduct, other issues, such as whether Dr Chu is a fit and proper person to be registered, are considered in the determination stage of the proceeding.

43 Counsel for Dr Chu submitted that the nature and seriousness of the conduct included:

a. The conduct considered globally was plainly professional misconduct;

b. The proven conduct under Allegations 1 and 2 is serious;

c. In relation to Allegation 3, the letter was provided in the context of being within three days after Dr Chu was given notice of the investigation by his employer;

d. In relation to Allegation 4, the Board has accepted that this conduct was not as serious as some cases of similar conduct. Dr Chu had received a letter from his employer, dated 11 September 2019, that the employer would be notifying Ahpra and Victoria Police of his conduct. Dr Chu self-notified Ahpra on 26 September 2019, that he had been stood down and then resigned.

44 Counsel for Dr Chu also submitted that it was open to the Tribunal to characterise the conduct as at the time the conduct occurred and that a finding of professional misconduct under the definitions in paragraph (b) and (c) would be more consistent with the National Law.

45 The Tribunal considers all of the proven conduct as serious and the conduct under Allegations 1 to 3 to be particularly serious. The conduct under Allegations 1 to 3 includes longstanding and detailed preparation for the obtaining financial advantage by deception by the taking of the copies of the clinical records, carefully calculated conduct to misuse his position as a medical practitioner in committing the offences, placing his own interests above those of the patients, breaching the trust of his patients and included dishonesty over an extended period of time.

46 The Tribunal accepts the link between the depressive condition and the gambling and also between the depressive condition and the gambling on the one hand and the obtaining financial advantage by deception on the other. The Tribunal is not satisfied that Dr Chu has proven that the offences were motivated by desperation to repay gambling debts as opposed to the purpose of accessing more funds for gambling. Dr Chu did not give evidence himself about this matter and the lengthy period of dishonesty and the period of the obtaining financial advantage by deception over approximately ten months would indicate against the proposition that the offending was in desperation to repay gambling debts. Dr Chu did not present any evidence of a lack of access to other funds to repay any gambling debts.

47 In relation to the characterisation of the proven conduct, as described in Allegations 1 to 4, when considered together, the Tribunal is satisfied that:

a. The conduct proven is conduct that is substantially below the standard reasonably expected of a registered health practitioner of an equivalent level of training or experience to Dr Chu; and

b. The conduct proven is conduct that is inconsistent with the practitioner being a fit and proper person to hold registration as a medical practitioner.

c. The proven conduct described in Allegations 1 to 4, when considered together, therefore constitutes professional misconduct within the meaning of paragraphs (a) and (c) of the definition of professional misconduct in section 5 of the National Law.

DETERMINATION

48 The parties have agreed that Dr Chu should be reprimanded. They also agree to the conditions to be placed on Dr Chu's registration and that the Tribunal should impose a global determination in relation to the proven allegations.

49 The parties do not agree whether a suspension of Dr Chu's registration should also be imposed. At the hearing, the Board submitted that a suspension for a period of six months is appropriate. Dr Chu opposes any suspension of his registration.

50 Generally, global penalties should be avoided in disciplinary proceedings, but may be utilised where the charges are "inextricably interwoven".

51 In *Victorian Legal Services Commissioner v Williams* (Legal Practice) [2022] VCAT 806 (15 July 2022), Quigley J President of VCAT ('Williams'), the Tribunal referred to the earlier decision of *Stirling v Legal Services Commissioner* [2013] VSCA 374 ('Stirling'), noting that preferring individual penalties:

> … allows for a sentence on one count to stand where a conviction for another count is quashed. Secondly, it is easier to assess whether a

> penalty is manifestly excessive or inadequate when each sentence is clearly pronounced on each count. Thirdly, by sentencing for separate offences, the court makes it clear to the public what the penalty for each offence is, thus assisting in the process of general deterrence. Finally, as in this case, adherence to this rule prevents conduct from one charge being used as an aggravating factor in assessing the penalty for another charge.

52 In *Williams* at [145], the Tribunal found that a global penalty may be appropriate:

> There are some cases … where the charged conduct is constituted by a course of behaviour as opposed to a set of separate events. In these circumstances where the facts of the case are so inextricably interwoven as to make it difficult to meet a clear standard of prescription, a global penalty may be applied.

53 In the present case, the Tribunal finds that the conduct proven is constituted by a course of behaviour in relation to the taking of copies of the clinical records for the purpose of obtaining financial advantage by deception, providing untrue information to his employer to cover up this conduct and failing to report the consequences of this conduct to the Board. The Tribunal is satisfied that the facts of the case are interwoven to the extent that a global determination should be applied.

54 The principles to be applied by the Tribunal in considering the appropriate determination are set out in *Medical Board of Australia v Griffiths* [2017] VCAT 822 as follows:

> 42. The purpose of determinations is protective not punitive. The objective is primarily the protection of the public and the maintenance of professional standards in the eyes of the public.
>
> 43. With that protective focus in mind, the Tribunal considers a range of factors including:
>
> - the nature and seriousness of the conduct;
> - whether the practitioner pleaded guilty or other evidence of contrition or remorse;
> - whether there is a need for specific deterrence (deterring the particular practitioner from further inappropriate conduct) or general deterrence (deterring other practitioners from engaging in similar conduct);
> - whether there have been other disciplinary findings before or since the conduct in question;
> - evidence of character;
> - evidence of rehabilitation;
> - any delay from the time the investigation started to the end of the Tribunal hearing;

- other mitigating factors such as medical or psychological evidence, family or other personal circumstances.

44. Some of the above factors will overlap. Specific deterrence, for example, requires consideration of the likelihood of the practitioner re-offending, whether because of:

    - a lack of insight into what occurred;
    - a lack of remorse about what occurred;
    - a history of offending conduct as opposed to a one-off explicable departure from otherwise high standards of conduct; or
    - other matters indicating either that a particular sanction is required to deter the practitioner from re-offending or, conversely, that rehabilitation has taken place.

45. As observed by the Tribunal in Medical Practitioners Board of Victoria v Grolaux [No. 2]:

> In context, this "insight" might be reflected in a variety of ways, such as an understanding of the nature of the conduct, an acceptance that the conduct was seriously wrong, an appreciation of why the practitioner engaged in that conduct, empathy with the consequences, and/or the willingness to take measures to identify risk factors and to avoid similar behaviour.

46. General deterrence requires consideration of whether there is a need to signal to other members of the profession that adverse consequences will follow such conduct, and thereby deter them from the same conduct, in the interests of maintaining professional standards and public confidence in the profession.

47. The task of the Tribunal in disciplinary proceedings is described by Cosgrove J in *Dickens v Law Society*:

> There is high authority for the proposition that the powers given to the disciplinary committee to discipline a practitioner are entirely protective in character. No element of punishment is involved... But to say that is merely to say that the powers are to be exercised for the purpose of, and in a manner seen likely to achieve, the maintenance of that high standard of conduct within the profession which will continue its good reputation, and protect, not only the future of the profession, but also protect its clients from harm.
>
> With this object in mind, the committee is required to look to the future. Even if the practitioner's misconduct be relatively slight, he may yet be struck off, if his capacities and attitude have been revealed to be such that his continuance in practice constitutes a threat to the profession. On the other hand, conduct which is itself

> more grave in nature, may not warrant striking off, if it is seen as a temporary and explicable departure from the practitioner's own high standards... The order which the committee is called upon to make is that order which, in its opinion, is necessary, and no more than is necessary, to maintain professional discipline and high standards of conduct.

48. Every case will be different. The nature of the offending conduct, the particular circumstances of the practitioner, the context of the offending and its duration, and the risk of repetition are all factors which will rarely be identical in any two cases.

49. Penalties imposed in other cases involving similar or analogous conduct will be a useful guide to proportionality, and to ensuring that the penalty imposed in the particular case is not outside the range of penalties imposed in the relevant jurisdiction. However, principles of parity should not override the need to consider the unique facts and circumstances of the case at hand.

CONSIDERATION OF DETERMINATION

55 The Tribunal considered the relevant factors as follows.

NATURE AND SERIOUSNESS OF CONDUCT

56 The conduct proven under Allegation 1, is that between 20 January 2018 and 18 October 2018, Dr Chu obtained financial advantage by deception in the amount of $24,005.75. He billed private health insurers on 13 invoices for 26 services which he dishonestly represented he had provided. The Tribunal finds that the conduct was particularly serious in the circumstances of the case, including that the conduct was carefully calculated to misuse his role as a medical practitioner in the hospital to commit the offences, the conduct involved a high level of dishonesty, and placed his own interests above those of the patients. The conduct was continuing for a period of approximately 10 months.

57 The conduct proven in Allegations 2, is that between June 2016 and February 2018, Dr Chu improperly accessed, stored and used clinical records of patients without any therapeutic purpose and for the purpose of obtaining a financial advantage by deception. He took copies of patients' clinical records from his workplace to his home and used those records to dishonestly bill insurers for services he had not provided. This conduct is particularly serious, in that it involved a longstanding and detailed preparation for the obtaining financial advantage by deception, by the taking of the copies of the clinical records, misused his position as a medical practitioner to obtain the records, placed his own interests above those of the patients, breached the trust of his patients and included dishonesty over an extended period of over 18 months.

58 The conduct proven in Allegations 3, is that on about 15 July 2019, Dr Chu provided untruthful information to his employer in response to the allegation about billing for work not undertaken. Dr Chu lied that an administrative error by another person had caused the bills to be mistakenly sent for services he had not undertaken. In fact, Dr Chu had fraudulently billed to deliberately obtain a financial advantage. The letter written to his employer was very deliberately dishonest and seeking to cover up misconduct which had been occurring for a period of years.

59 Allegations 1 to 3 are serious matters, particularly due to the length of the combined dishonest conduct being from June 2016 until July 2019. The conduct in no way can be considered isolated.

60 In relation to Allegation 4, Dr Chu was charged by Victoria Police with 13 counts of obtaining financial advantage by deception on 18 May 20120. He was obliged under section 130 of the National Law to report these charges to the Board within seven days of becoming aware of this matter. He did not report the matter to the Board within seven days. The Board became aware of the conduct by other means.

GENERAL DETERRENCE

61 The Board submitted that general deterrence was needed in circumstances where there was inherent dishonesty in the misconduct, the conduct was over a long period and there was a deliberate misuse of the privileges of a medical practitioner to commit criminal offences.

62 Counsel for Dr Chu submitted that the present case was not an appropriate vehicle for general deterrence due to Dr Chu's rehabilitation and the period of four years since the disposition of the criminal matter.

63 The Tribunal finds there is a need for general deterrence to be part of the determination consideration to deter other practitioners from engaging in such serious improper conduct.

SPECIFIC DETERRENCE

64 In deciding the need for specific deterrence in making the appropriate determination, issues such as insight and remorse are relevant.

65 Counsel for the Board, in summary, made the following submissions on issues relevant to specific deterrence:

a. The controlled nature of the offending contradicts Dr Chu's position that the thefts were in desperation to repay gambling debts;

b. Given the insight shown by Dr Chu into his misconduct, his admissions in this proceeding and the steps he has taken to prevent his misconduct from reoccurring, there is no requirement for sending a clear message of unsuitability to practice. The Board does not seek a cancellation of Dr Chu's registration and a period of disqualification.

c. Counsel for Dr Chu, in summary, made the following submissions on issues relevant to specific deterrence:

d. Dr Chu's mental health is the key issue in this case;

e. In *Medical Board of Australia v POS* [2019] VCAT 1678 at [57], the Tribunal found that outside of general deterrence there did not seem to be a point in suspending a practitioner where the offending concerned was partly, if not wholly, explained by evidence of a prolonged history of mental ill health. In the present case the offending of Dr Chu is partly, if not wholly, explained by evidence of a prolonged history of mental ill health. Reliance was placed on the medical reports summarised above at [28];

f. There is evidence of contrition and remorse, including in his statement to police and to his treating practitioners.[4] There is no evidence of other disciplinary findings regarding Dr Chu. The misconduct was out of character, which is consistent with the Magistrates' Court imposing a Diversion Program and there is strong evidence of rehabilitation;

g. Almost five years have passed since the misconduct. In this time, Dr Chu has engaged in therapy and become well. He has developed insight and awareness of his misconduct and his personal and health circumstances at the time of the misconduct;

h. Dr Chu's personal circumstances are that he is recently married and has a one year old child. His partner is a doctor working part time and undertaking a PhD. The family depend on Dr Chu's income. At the date of the hearing, Dr Chu was enrolled to take the Royal Australasian College of Surgeons entry examination in October 2023. He has undertaken voluntary teaching at Monash University;

i. Dr Chu's rehabilitation is directly relevant to the need to protect the public from Dr Chu and therefore whether there is a need for specific deterrence. It was submitted that due to his rehabilitation there is no need for specific deterrence in this case;

j. Dr Chu is enrolled for the Royal College of Surgeons entry examination. There could be adverse career consequences if his registration is suspended. It was submitted that there are recency and continuity of practice requirements for entry to the program.

k. Dr Chu repaid all funds before requested by Monash Health, save for one amount for which further information was being provided.

l. The misconduct was out of character and intertwined with Dr Chu's untreated mental health conditions.

m. Four years after the misconduct and after the disposition of the criminal proceedings, there is no need for specific deterrence;

[4] See, for example, report of Tracey Allen, Psychologist, dated 18 June 2023, at p2, and report of Luke Armstrong, Consultant Psychologist, dated 1 October 2022, at p6-7.

n. A suspension of registration would have a crushing effect on Dr Chu.

66 In reply, the Board submitted that there was no evidence of the effect of the suspension on Dr Chu's proposed surgical training and therefore Dr Chu's submissions on this point were speculative.

67 Dr Chu did not give evidence to the Tribunal at the hearing. The Tribunal was therefore unable to hear firsthand from Dr Chu regarding matters relevant to specific deterrence and for that evidence to be tested under cross examination from the Board. The Tribunal is therefore at a disadvantage when considering the arguments put forward on behalf of Dr Chu as to his remorse, insight and rehabilitation and how he has changed over the years since the conduct.

68 Dr Chu's conduct included dishonesty over an extended period, including when confronted with allegations from his employer, when he attempted to lie to avoid the consequences of the conduct. From the material before the Tribunal, including the medical reports and Dr Chu's statement to Victoria Police, the Tribunal finds that Dr Chu has developed genuine insight and remorse for his conduct. He has undertaken significant efforts at rehabilitation.

69 The Tribunal finds that Dr Chu suffered from mental health conditions and a gambling addiction. The Tribunal accepts that these conditions are currently in remission. The Tribunal also accepts that these conditions contributed to his conduct, but are not an excuse or full explanation for his conduct. Significant moral culpability continues to rest with Dr Chu.

70 As discussed above, the Tribunal is not satisfied that the offending conduct was due to Dr Chu's desperation to repay gambling debts.

71 On the evidence before the Tribunal, we are not satisfied that a suspension would have a crushing effect on Dr Chu's career choice to train as a surgeon. We do accept that it would be likely to cause some delay to his pursuit of this career.

72 The medical material indicates that relapses in his conditions and re-offending is unlikely, but possible, in the context of his conditions being well managed and his continuing engagement with non-intensive treatment, mainly consisting of reviews and debriefing.

73 While the evidence favourable to Dr Chu regarding remorse, insight and rehabilitation reduces the need for specific deterrence, the Tribunal considers that it still has some work to do due to the nature of the conduct and the risk of relapsing and re-offending in particular circumstances, which may include Dr Chu failing to pay sufficient attention to his own health. It is important for Dr Chu to understand that such serious conduct is not without consequences in the area of professional regulation.

EVIDENCE OF CHARACTER AND PAST DISCIPLINARY HISTORY

74 The Tribunal was not referred to any previous disciplinary proceedings against Dr Chu in the Tribunal.

75 As discussed above, Mr Armstrong and Ms Allen have both indicated that the misconduct was out of character with Dr Chu's background and history.

76 A reference from the Director of General Surgical Training at Monash Health, dated 1 August 2019, does not indicate whether the writer was aware of the proven conduct under Allegations 1 to 4. The reference states that the writer has found Dr Chu to be honest. In those circumstances, the Tribunal can place little weight on this reference.

GUILTY PLEA

77 Early in the Tribunal process, Dr Chu formally accepted the Allegations and particulars as correct. This goes to the respondent's credit. However, Dr Chu lied to his employer when the obtaining financial advantage by deception allegations were put to him and he sought to further deceive his employer that the situation was an honest mistake.

PREVIOUS CASES

78 Each party in general accepted that caution should be exercised in drawing conclusions as to determinations in previous cases, as each case must be decided on its own merits and the appropriate determination to protect the public is likely to be different in each case.

79 In that light the Board, submitted that in each case which the Board has been able to identify where a practitioner engaged in misconduct by way of fraudulent billing, the practitioner's registration has been suspended or cancelled.

80 Counsel for Dr Chu relied upon the cases of *Medical Board of Australia v POS* [2019] VCAT 1678 and *Pharmacy Board of Australian v Mak* [2017] VCAT 1901 for the proposition, that despite dishonest conduct in a position of trust, the Tribunal may take into account the forward looking and rehabilitation matters and decide not to impose a suspension or cancellation. In the circumstances of a case, a suspension may be punitive rather than protective.

OTHER MITIGATING FACTORS

81 As discussed above there is a significant amount of medical evidence supporting the conclusion that at the time of the conduct Dr Chu was suffering from Major Depression and a Gambling Disorder.

82 Dr Chu produced documentary evidence that he had successfully completed, amongst other education:

a. A graduate diploma in Surgical Anatomy in 2021;

b. Basic for COVID in 2021;

c. Investigator and Site Personnel Good Clinical Practice training in 2021;

d. National Standard Medication Charts 2022 online course;

e. Medication safety (version 3) 2022.

83 In 2022, Dr Chu was engaged in voluntary teaching at St Vincent's Hospital for two hours per week.

84 The delay in disciplinary proceedings being commenced and finalised has been recognised as a matter to be taken into account in determining an appropriate penalty. A delay may be a mitigating factor and is considered in the light of the rehabilitation of the person in the period and the fairness of such a delay on the person.[5] The Tribunal considers that it should take into account that Dr Chu had disciplinary matters hanging over him for a period of about four years.

APPROPRIATE SANCTION

85 The Tribunal has taken in to account the above matters. In the Tribunal's consideration of the appropriate determination in this case, significant factors include the need for the protection of the public through general deterrence and specific deterrence and the related need to protection the public from the risk of future contraventions by Dr Chu.

86 The Tribunal is satisfied that a reprimand is appropriate to denounce the serious conduct of Dr Chu in this case.

87 The conditions of Dr Chu's registration agreed by the parties are significant in dealing with the need for specific deterrence. The Tribunal rejects the submission on behalf of Dr Chu that the proposed conditions are onerous. The conditions are responsive to the needs of this case, save for one additional matter which the Tribunal raised with the parties. Considering Dr Chu's gambling addition, the Tribunal considers it appropriate that his treating practitioners be able to compel his involvement with Gamblers Anonymous or another gambling assistance program, if they consider such support appropriate. This will be included in the conditions imposed on Dr Chu's registration by the Tribunal's orders.

88 The Tribunal considers that after the imposition of the conditions on Dr Chu's registration there remains a need for specific deterrence, as discussed above and a need for general deterrence to indicate to other practitioners the serious potential outcomes from such long term, dishonest conduct in their roles as medical practitioners. The Tribunal considers a period of suspension is required to be imposed to achieve these goals.

[5] *Stirling* at [121].

89 We consider the period of suspension proposed by the Board to be appropriate taking into account all of the circumstances. Dr Chu's registration will be suspended for six months.

CONCLUSION

90 The Tribunal has therefore decided that the appropriate determination in this matter is to reprimand Dr Chu, suspend Dr Chu's registration as a practitioner for a period of six months and impose the conditions on registration agreed between the parties, with one change as noted above.

N Campbell **Presiding Member**	Dr A Williams **Health Practitioner Member**	Dr P Molloy **Health Practitioner Member**

Schedule 1

MEDICAL BOARD OF AUSTRALIA

APPLICANT

AND

DR ALEX PO TSUN CHU

RESPONDENT

ALLEGATIONS

The allegations in respect of Dr Alex Po Tsun Chu (**Respondent**) referred to the Victorian Civil and Administrative Tribunal (**Tribunal**) by the Medical Board of Australia (**Applicant**) pursuant to s 193(1)(a) of the *Health Practitioner National Law (Victoria)* (**National Law**), are:

ALLEGATION ONE

1 The Respondent engaged in:

(a) professional misconduct within the meaning of paragraphs (a), (b) and/or (c) of the definition in section 5 of the National Law; and/or

(b) unprofessional conduct within the meaning of the definition in section 5 of the National Law in that between 20 January 2018 and 18 October 2018, contrary to section 82(1) of the *Crimes Act 1958* (Vic) (**Crimes Act**), the Respondent obtained a financial advantage by deception by billing private health insurers in the amount of $24,005.75.

PARTICULARS

i At all material times the Respondent held general Registration as a Medical Practitioner under registration number MED0001791523.

ii At all material times, the Respondent was employed as a trainee surgical registrar at Monash Health and, on occasion, worked as a professional surgical assistant at the Jesse McPherson Hospital (**Hospital**), which is a controlled entity of Monash Health.

iii Between 20 January 2018 and 18 October 2018 the Respondent billed five private health insurers (**Insurers**) on 13 occasions (as set out in Table 1) for surgical assistance services purportedly rendered by him, totaling $24,005.75 (**Funds**).

iv In billing the Insurers, as particularised in paragraph iii) above, the Respondent dishonestly represented to the Insurers that the relevant service(s) had in fact been provided by the Respondent when they were not.

v The Respondent was paid the Funds and used the Funds for his own personal use.

vi On 18 May 2020, the Respondent was charged by Victoria Police with 13 counts of obtaining a financial advantage by deception as a result of the conduct particularised in paragraphs iii) to v) above (**Charges**).

vii On 18 August 2020, the Respondent entered into a diversion plan at Moorabbin Magistrates' Court in which he acknowledged responsibility for the conduct underlying the Charges (Diversion Plan).

viii The Respondent was at all materials time required to be familiar with and to conduct himself and his practice of the profession according to the Applicant's "Good medical practice: a code of conduct for doctors in Australia" March 2014 applicable at the time of the alleged conduct (Medical Practitioner Code of Conduct).

ix At the time of the conduct set out in paragraphs iii) to vi) above, the Respondent's conduct was:

(a) in breach of the Monash Health Code of Conduct set out in section 3 of Monash Health's "Code of Conduct – Staff Operational Policy" which expects the Respondent to act honestly and in good faith and to comply with provisions of relevant legislation, conduct himself in accordance with the relevant professional guidelines and to comply with the provisions of relevant legislation.

(b) inconsistent with principle 1.4 of the Medical Practitioner Code of Conduct which provided that:

> Professional values and qualities of doctors – They must be ethical and trustworthy.
>
> Patients trust their doctors because they believe that, in addition to being competent, their doctor will not take advantage of them and will display qualities such as integrity, truthfulness, dependability and compassion..."

(c) inconsistent with principle 1.4 of the Medical Practitioner Code of Conduct which provided that:

> Professional values and qualities of doctors – They must be ethical and trustworthy.
>
> Patients trust their doctors because they believe that, in addition to being competent, their doctor will not take advantage of them and will display qualities such

as integrity, truthfulness, dependability and compassion..."

(d) inconsistent with principle 8.1 of the Medical Practitioner Code of Conduct which provided that:

"In professional life, doctors must display a standard of behaviour that warrants the trust and respect of the community. This includes observing and practicing the principles of ethical conduct."

ALLEGATION TWO

2 The Respondent engaged in:

(a) professional misconduct within the meaning of paragraphs (a), (b) and/or (c) of the definition in section 5 of the National Law; and/or

(b) unprofessional conduct within the meaning of the definition in section 5 of the National Law in that between on or about June 2016 and February 2018, the Respondent improperly accessed, stored and used clinical records of patients at the Hospital without any therapeutic purpose and/or for the purpose of gaining financial advantage by deception.

PARTICULARS

i At all material times the Respondent held general registration as a Medical Practitioner under registration number MED0001791523;

ii At all material times, the Respondent was employed as a trainee surgical Registrar at Monash Health and, on occasion, worked as a professional surgical assistant at the Hospital, which is a controlled entity of Monash Health.

iii Between on or about June 2016 and on or about February 2018 the Respondent accessed and took copies of operation records contained in the clinical records of patients at the Hospital (**Clinical Records**) to his place of residence.

iv The patients whose Clinical Records were accessed, copied and taken to the Respondent's place of residence were not patients of the Respondent.

v The Respondent used the clinical records to dishonestly bill Insurers for surgical assistance fees for which the Respondent was charged under section 82(1) of the *Crimes Act 1958* (Vic), as set out in Allegation One above.

vi By engaging the conduct particularised in paragraphs iii) to v) above, the Respondent:

(a) used and accessed clinical records containing private and personal health information without any therapeutic purpose and in breach of patient confidentiality; and/or

(b) failed to store those clinical records correctly and securely by taking them to his place of residence.

vii The Respondent was at all material times required to be familiar with and to conduct himself and his practice of the profession according to the professional accepted standards set out in the Medical Practitioner Code of Conduct.

viii At the time of the conduct set out in paragraphs iii) to v) above, the Respondent's conduct was:

(a) in breach of the Monash Health Code of Conduct set out in section 3 of Monash Health's "Code of Conduct – Staff Operational Policy" which provided that the Respondent is to act honestly and in good faith, respect the privacy of others, particularly patients, handle confidential information acquired in the course of employment in a secure manner and only for the purposes for which it was received and conduct himself in accordance with the relevant professional guidelines.

(b) in breach of clause 4 of Monash Health's Privacy Operational Policy which provided that the respondent must respect and protect patient confidentiality and will use patient information for the purpose of providing care and treatment to patients.

(c) inconsistent with principle 1.4 of the Medical Practitioner Code of Conduct which provided that:

> Professional values and qualities of doctors – They must be ethical and trustworthy.
>
> Patients trust their doctors because they believe that, in addition to being competent, their doctor will not take advantage of them and will display qualities such as integrity, truthfulness, dependability and compassion..."

(d) inconsistent with principle 3.4 of the Medical Practitioner Code of Conduct which provided that:

> "patients have a right to expect that doctors and their staff will hold personal information about them in confidence, unless release of information is required by law or public interest considerations."

(e) inconsistent with principle 8.1 of the Medical Practitioner Code of Conduct which provided that:

> "In professional life, doctors must display a standard of behaviour that warrants the trust and respect of the community. This includes observing and practicing the principles of ethical conduct."

(f) inconsistent with principle 8.4.2 of the Medical Practitioner Code of Conduct which provided that the Respondent should ensure that "medical records are held securely".

ALLEGATION THREE

3 The Respondent engaged in:

(a) professional misconduct within the meaning of paragraphs (a), (b) and/or (c) of the definition in section 5 of the National Law; and/or

(b) unprofessional conduct within the meaning of the definition in section 5 of the National Law on or about 15 July 2019, by responding untruthfully to the allegations raised by Monash Health concerning his billing of Insurers for providing assistant surgery services which occurred from on or about 8 June 2016 and 4 February 2018.

PARTICULARS

i The Applicant relies and repeats the particulars at paragraphs iii) and v) to Allegation One.

ii By letter dated 11 July 2019, Monash Health informed the Respondent that he was being investigated for billing for assisting in surgeries on 26 occasions when he had not been listed as the assistant surgeon in the clinical notes. The billings are as set out in Table 1 of Allegation One.

iii By letter dated 15 July 2019, the Respondent explained to Monash Health that the billings had occurred erroneously because of an administrative error. He noted that he kept two sets of patient operation notes on the same desk and the person who was helping him with his billings picked up the incorrect notes and entered those details into the billing system. The Respondent made the response with knowledge that it was untrue and had intended to mislead the investigation and downplay the seriousness of his inappropriate billings.

iv On 18 August 2020 the Respondent entered into the Diversion Plan in which he admitted he had deliberately and willfully gained a financial advantage by deception by billing the Insurers for rendering surgical assistance services that he did not provide, and that therefore the billings were not the result of an administrative error.

v The Respondent was at all material times required to be familiar with and to conduct himself and his practice of the profession according to the professional accepted standards set out in the Medical Practitioner Code of Conduct.

vi At the time of the conduct set out in paragraphs i) to iii) above, the Respondent's conduct was:

(a) in breach of the Monash Health Code of Conduct set out in section 3 of Monash Health's "Code of Conduct – Staff Operational Policy" which provided that the Respondent is to act honestly and in good faith and conduct himself in accordance with the relevant professional guidelines.

(b) inconsistent with principle 1.4 of the Medical Practitioner Code of Conduct which provided that:

> Professional values and qualities of doctors – They must be ethical and trustworthy.
>
> Patients trust their doctors because they believe that, in addition to being competent, their doctor will not take advantage of them and will display qualities such as integrity, truthfulness, dependability and compassion..."

(c) inconsistent with principle 8.1 of the Medical Practitioner Code of Conduct which provided that:

> In professional life, doctors must display a standard of behaviour that warrants the trust and respect of the community. This includes observing and practicing the principles of ethical conduct…
>
> 8.10 Investigations
>
> Doctors have responsibilities and rights relating to any legitimate investigation of their practice... Good medical practice involves:
>
> 8.10.1 Cooperating with any legitimate inquiry… with any complaints procedure that applies to your work.
>
> 8.10.2 Disclosing, to anyone entitled to ask for it, information relevant to an investigation in to your own… conduct…

ALLEGATION FOUR

4 The Respondent engaged in:

(c) professional misconduct within the meaning of paragraphs (a), (b) and/or (c) of the definition in section 5 of the National Law; and/or

(d) unprofessional conduct within the meaning of the definition in section 5 of the National Law in that between on or about 18 May 2020 and 25 May 2020, contrary to section 130(1) of the National Law, the Respondent failed to notify the Applicant of a relevant event within seven (7) days, namely that he had been charged with an offence punishable by 12 months imprisonment or more.

PARTICULARS

i The Applicant relies and repeats the particulars at paragraphs i) – v) to Allegation One, including that on 18 May 2020, the Applicant was charged with 13 counts of obtaining financial advantage by deception.

ii The Charges carried a maximum punishment of 10 years imprisonment.

iii The Respondent failed to notify the Applicant of the Charges within the time period specified under section 130(1), being 7 days.

iv The Respondent had failed to comply with his obligations under section 130(1) of the National Law.

v The Respondent was at all materials time required to be familiar with and to conduct himself and his practice of the profession according to the Medical Practitioners

5 Code of Conduct.

i At the time of the conduct set out in paragraphs i) to iv) above, the Respondent's conduct was inconsistent with principle 8.3 of the Medical Practitioners Code of Conduct which provided that:

> Doctors have statutory obligations under the National Law to report various proceedings or findings to the Medical Board of Australia…. Good medical practice involves:
>
> 8.3.1 Being aware of these reporting obligations.
>
> 8.3.2 Complying with any reporting obligations that apply to your practice.
>
> 8.3.3 Seeking advice from the Medical Board or your professional indemnity insurer if you are unsure about your obligations.

ALLEGATION FIVE

6 The Respondent engaged in:

(a) professional misconduct within the meaning of paragraphs (a), (b) and/or (c) of the definition in section 5 of the National Law; and/or

(b) unprofessional conduct within the meaning of the definition in section 5 of the National Law in that on or about 19 August 2020, the Respondent failed to meet his obligations under section 109(1) of the National Law when he failed to declare when renewing his 2020-2021 registration as a medical practitioner that he had entered into the Diversion Plan.

PARTICULARS

i The Applicant relies and repeats the particulars at paragraphs i) – vii) to Allegation One;

ii The Respondent applied to the Applicant for renewal of his General Registration as a Medical Practitioner on 19 August 2020 (**Renewal Application**).

iii the Respondent, as part of the Renewal Application, was required:

(a) under section 109(1)(b) of the National Law to declare any changes to his criminal history; and

(b) under section 109(1)(f) of the National Law declare any other information required by an approved registration standard, including the Applicant's Registration Standard: Criminal History (**Standard**).

iv Under the Standard, the Respondent was required, but failed to, declare that he had entered into a Diversion Plan.

v By engaging in the conduct above the Respondent failed to comply with section 109(1) of the National Law.

vi The Respondent's conduct, as set out in paragraphs i) to iv) above, was inconsistent with principle 8.3 of the Medical Practitioners Code of Conduct which provided that:

> Doctors have statutory obligations under the National Law to report various proceedings or findings to the Medical Board of Australia…. Good medical practice involves:
>
> 8.3.1 Being aware of these reporting obligations.
>
> 8.3.2 Complying with any reporting obligations that apply to your practice.
>
> 8.3.3 Seeking advice from the Medical Board or your professional indemnity insurer if you are unsure about your obligations.